



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address : COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

GROUP 170

Paper No. 13

In re application of  
Robert L. Lundak  
Serial No. 247,656  
Filed: March 26, 1981  
For: HIGH FUSION FREQUENCY  
FUSIBLE LYMPHOBLASTOID CELL  
LINE

: Decision on Petition  
: Filed  
: May 6, 1983

MAILED: 20 JUL 1983

Applicant petitions the Commissioner for Patents and Trademarks to exercise his supervisory authority to reverse the examiner's rejection of the subject application for failure to deposit the organism at the time of filing.

Applicant has analyzed the various cases on the issue and concludes that the law is unclear. He also feels that the statute and the Code of Federal Regulations merely provide for the Patent and Trademark Office to request a composition of matter and thus would not appear to require a deposit.

The present application has been reviewed, taking into consideration all of applicant's comments set forth in his petition. It should be noted that the issue raised by applicant in the petition is on the merits and thus is appealable and not petitionable. This is clear since applicant in his petition seeks reversal of the examiner's rejection. Appealable matters are handled by the Board of Appeals. Note section 1201 of the MPEP.

Since the issue raised by applicant in his petition is appealable and not petitionable, the petition is hereby denied.

Robert F. White, Director  
Patent Examining Group 170  
Specialized Chemical Industries  
and Chemical Engineering

Townsend & Townsend  
Steuart Street Tower  
One Market Plaza  
San Francisco, CA 94105